IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1193 of 2005
With
CRIMINAL APPEAL No. 1626 of 2005
With
CRIMINAL REV. APPLICATION No. 577 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HILESHBHAI @ NILESH CHANDUBHAIGOHEL & 1 - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KAPOOR WITH MURALI N DEVNANI for Appellant(s) : 1 - 2.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 07/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the judgment and order dated 31.5.2005 passed by the Presiding Officer, 10th Fast Track Court, Rajkot, in Sessions Case No. 98/04, Criminal Appeal No. 1193/05 has been filed by the convicts, whereas Criminal Appeal No. 1626/05 has been filed by the State praying for enhancement of the punishment inflicted upon the convicts. Criminal Revision Application No. 577/05 has been filed by the original complainant.

2. As the aforesaid three proceedings have arisen from Sessions Case No. 98/04 referred to hereinabove, at the request of the learned advocates, the appeals and revision application have been heard and decided together.

3. During the trial Chandubhai Naranbhai Gohel, original accused No. 2, had expired and, therefore, the proceedings, qua the said accused, have been abated.

4. For the sake of convenience, the parties to the litigation have been described as arrayed in Criminal Appeal No. 1193/05.

5. By virtue of the impugned order, accused No. 1 – appellant No. 1 and accused No. 3 – appellant No. 2 in Criminal Appeal No. 1193/05 have been held guilty of the charges levelled against them under the

provisions of sec. 306 r/w sec. 114 of the Indian Penal Code and they have been sentenced to Rigorous Imprisonment for 2 years and a fine of Rs. 2,000/-, in default of payment of fine Simple Imprisonment for 3 months. The said accused-appellants have also been held guilty of the offence punishable under sec. 498(A) of IPC and have been sentenced to undergo rigorous imprisonment for one year and a fine of Rs. 2,000/-, in default of payment of fine, simple imprisonment for 3 months. Substantive sentences have been ordered to run concurrently.

6. The case of the prosecution, as stated before the Sessions Court, was as under:-

6.1 Rajesh Manilal Gohel, PW No.4 (Ex. 30) filed an FIR at Baktinagar Police Station, Rajkot, on 11.6.2004 (Ex. 31) stating that he was a tailor having 2 brothers and 3 sisters. One of his sisters, namely, Urmilaben, who had married Hileshbhai @ Nileshbhai Chandubhai Gohel before about 10 years and had two children, namely, a daughter aged 8 years and a son aged 4 years. After getting married, Urmilaben as well as her husband Hileshbhai @ Nileshbhai Chandubhai Gohel, appellant No. 1, had hardly come to their place one or two times together; mostly his sister Urmilaben used to come alone to his residence and she used to say that her father-in-law and mother-in-law, who were teachers in a primary school, used to visit them on Saturdays and Sundays and they

used to torture her mentally and physically for dowry. In the circumstances, the complainant and other family members used to tell Urmilaben that with passage of time things would become normal, but things didn't become normal. Before about 5 years from the date of filing the FIR, Urmilaben was driven out from her husband's house without even permitting her to take her baggage and at that time Urmilaben had come to his place and had told about the torture she was undergoing. Thereafter, the father-in-law (expired) and mother-in-law, Ranjanben Chandubhai Gohel, original accused no. 3- appellant No. 2 – had come to Ahmedabad and in presence of some of the elders of their community they had assured the complainant and other family members that Urmilaben would not be harassed and in pursuance of the compromise, Urmilaben was taken to her in-law's place. Thereafter Urmilaben was never permitted to come to her parental home but during the last vacation, Urmilaben had visited her parents only with the children and had stated that her husband used to beat her and her father-in-law and mother-in-law were also torturing her. She was very much afraid of her husband and in-laws and, therefore, she had stayed for about a week with her parents. Thereafter she had gone back to her in-laws's place at Rajkot.

6.2 On 10.6.2004, when the complainant was at his shop, he was informed by her sister's husband, Bhupatkumar, that Tansukhbhai B. Gohel, PW No.9, (Ex. 48) had telephoned him from Rajkot and told him that

Urmilaben had been admitted in Madhuram Hospital and she was serious. Therefore, the complainant, his parents and his brothers had gone to Madhuram Hospital, Rajkot and they were informed that Urmilaben had expired when she was being treated at the said hospital. They had sent the dead body of Urmilaben in the postmortem room of the hospital. At that time, appellant No. 1 was asked as to what had happened and in reply thereto he had stated that alongwith his parents he had gone out for purchase of medicines for his father and at the time when Urmilaben was alone she had consumed poison. This is what he was informed by some persons and he came to know of it only when he had come to the hospital.

6.3 Thus, the complainant had stated that Urmilaben was given physical and mental torture by the appellants especially because her parents had not given dowry and, therefore, Urmilaben was constrained to commit suicide.

6.4 In pursuance of the aforesaid FIR, a case had been registered and investigated. In the course of the trial, the following main witnesses had been examined.

(1)Dakshaben Vyas, panch witness, PW No 1 (Ex. 19)
(2)Maheshbhai Vyas, panch witness, PW No. 2 (Ex. 21)
(3)Vittalbhai Gopalbhai Donga, panch witness, PW No. 3 (Ex. 23)

(4)Rajesh Manilal Gohel, complainant and brother of Urmilaben, PW No. 4 (Ex. 30)

(5)Manilal Gohel, father of Urmilaben, PW No. 4 (Ex. 35)

(6)Sunilkumar Gohel, brother of Urmilaben, PW No. 6 (Ex. 37)

(7)Dipakkumar Gohel, brother of Urmilaben, PW No. 7 (Ex. 39)

(8)Dr. Mukesh Upadhyay, Medical Officer, PW No. 8 (Ex. 41)

(9)Tansukhbhai Babubhai Gohel, uncle of Urmilaben, PW No. 9 (Ex. 48)

(10)Dr. Nilang Vasavada, the doctor at Madhuram Hospital, who had examined Urmilaben, PW No. 10 (Ex. 52)

(11) Jagdishbhai Rajguru, I.O., PW No. 11 (Ex. 58)

(12)Kishorsinh Jhala, PSI, PW No. 12 (Ex. 59)

6.5 The following important documents were adduced in evidence before the Sessions Court:

(1)Inquest panchnama (Ex. 20)

(2)Arrest panchnama (Ex.24)

(3)FIR (Ex. 31)

(4)Postmortem Note (Ex. 42)

6.6 After examining the witnesses and considering the evidence in the nature of documents referred to hereinabove and other evidence, the Sessions Court found the appellants guilty of the offences charged against them and it has passed the order of

conviction and has imposed punishment referred to heeinabove upon the appellants.

7. Learned advocate Shri Kapoor has appeared for the appellants and learned APP Shri KT Dave has appeared for the State.

7.1 Learned advocate Shri Kapoor appearing for the appellants has raised a technical contention with regard to sealing of viscera. It has been submitted by him that there is no evidence with regard to the way in which viscera was preserved and sealed by the doctor, who had taken viscera. He has submitted that if the sealing process was not proper, there are all chances that the sample might not have been preserved well, which would have adversely affected the result or conclusions drawn by the Chemical Analyzer. He has submitted that her death could have been accidental also.

7.2 It has been thereafter submitted by him that the witnesses, whose statements the Sessions Court has relied upon, are not eye witnesses. According to him, the witnesses have stated something which was hearsay and, therefore, the Sessions Court should not have relied upon the said witnesses.

7.3 In view of paucity of evidence, it was not proper for the Sessions Court to hold the appellants guilty of the offences charged against them.

7.4 It has been further submitted by him that neighbours of Urmilaben should have been examined so as to know whether, in fact, relations among Urmilaben and her in-laws were strained or cordial. According to him, in absence of any evidence of the witnesses to the effect that Urmilaben and her in-laws used to quarrel, the Sessions Court could not have come to the conclusion that Urmilaben had committed suicide because of mental and physical torture inflicted upon her by the appellants.

7.5 So as to substantiate his submissions, learned advocate Shri Kapoor has relied upon the following judgments:

(1)State of Gujarat v. Bharatbhai Balubhai Lad & Ors., 2006(1) GLH 718.
(2)Inderpal v. State of M.P., 2002 Cri.L.J. 926.
(3)Gananath Pattnaik v. State of Orissa, 2002 SCC(Cri) 461.

8. On the other hand, learned APP Shri KT Dave has supported the impugned judgment and order convicting the appellants. It has been submitted by him that upon appreciation of evidence, the Sessions Court has rightly held the appellants guilty of the offences charged against them.

8.1 He has relied upon the judgment delivered in the case of **Gurbachan Singh v. Satpal Singh and others**, AIR 1990 SC 209 to substantiate his case that only on

the basis of statements made by the relatives of the deceased, conviction under sec. 306 of IPC can be made. He has submitted that in the instant case, ample evidence has been led by the prosecution to show that Urmilaben was being tortured and, therefore, it cannot be said that there was no evidence to the effect that there was mental as well as physical torture to her.

9. We have heard the learned advocates at length and have also carefully gone through the evidence, which had been considered by the Sessions Court.

9.1 Upon perusal of the evidence, it is very clear that brother of Urmilaben, Rajesh Manilal Gohel, PW No. 4 (Ex. 30) has stated that Urmilaben had very often made complaint to her family members, that is, her parents and brothers, that for not giving dowry, her in-laws used to torture her. It has been also stated by him in his evidence that very often Urmilaben was being compared with a beggar. Even a few days earlier, when Urmilaben had come to her parents house, she had stated that she was not inclined to go back to her in-law's house. She had an apprehension that she might be killed by her in-laws. Thereafter, only because of persuasion of her family members, she had shown readiness to go to her in-law's house and she had been sent there. Thus, the evidence of her brother Rajesh Manilal Gohel, PW No.4 (Ex. 30) clearly reveals that Urmilaben was being tortured for not bringing money by way of dowry from

her parents.

9.2 Another brother of Urmilaben, Dipakkumar Manilal Gohel, PW No. 7 (Ex. 39) has also sated in his evidence almost similar facts.

9.3 Similarly, father of Urmilaben, Manilal Gohel, PW No. 5 (Ex. 35) has also stated that Urmilaben used to tell him that she was being tortured by her in-laws as he was unable to give dowry. He has also stated that in the past once Urmilaben had been driven out from her in-law's house but at that time some senior members of their community had intervened and because of their efforts, there was a compromise and thereafter Urmilaben had gone back to her in-law's house.

9.4 Similarly, another brother, namely, Sunilkumar Gohel, PW No. 6 (Ex. 37) has also sated what had been stated by brother Rajesh Gohel, PW No. 4 (Ex. 30) and father Manilal Gohel, PW No. 5 (Ex. 35). We find that there are no contradictions in the evidence which has been adduced by the brothers and father of Urmilaben. Thus, there is reason to believe that Urmilaben was being tortured by the appellants as the complainant and other family members of Urmilaben had not given dowry to her in-laws. The aforesaid facts clearly establish that dowry had been demanded by the appellants from Urmilaben.

9.5 In the circumstances, we do not see any reason

to interfere with the findings of the Sessions Court to the effect that the amount of dowry had been demanded by the appellants from Urmilaben and as dowry to the satisfaction of the appellants was not given by her parents, Urmilaben was tortured physically and mentally by the appellants. We, therefore, see no reason to interfere with the findings of the Sessions Court and the order of conviction so far as offence u/s 498(A) of IPC is concerned. We, therefore, uphold the order of conviction and punishment so far as it pertains to the offence under sec. 498(A) of IPC.

9.6 So far as the case against the appellants for commission of offence u/s 306 is concerned, we find that at the time when Urmilaben had consumed poison, her in-laws were not present. From the evidence it is clear that the appellants and father of appellant No. 1, Chandubhai Gohel (who has expired during pendency of the trial) were not present when poison was consumed by Urmilaben. It is difficult for this court to believe that mental or physical torture inflicted on her was to such an extent that Urmila would have decided to commit suicide. Evidence has been led to the effect that only a few days before she had come to her in-law's house from her parental home and during the period when she had stayed with her in-laws, Urmilaben had not made any serious grievance with regard to mental or physical torture given by the appellants. It is true that in the past there was torture on account of non-payment of dowry

and for that reason Urmilaben had also to leave her in-law's house, but subsequently there was a compromise and, therefore, Urmilaben had gone to her in-law's house. These facts denote that possibly there was no such torture which would have constrained Urmilaben to take such a drastic step of committing suicide.

9.7 Of course, we do not intend to go into the submissions made by learned advocate Shri Kapoor that the sealing process of sample-viscera has not been properly explained or there is no evidence to the effect as to who had sealed the samples and why the samples were sent late to the FSL. According to us, though there is no substance in the said submission, we do not deal with the same for different reason. We are inclined to believe that there was no such physical or mental torture after Urmilaben came to her in-law's house so as to constrain Urmilaben to commit suicide and, therefore, in our opinion, it cannot be said that commission of suicide is only on account of torture of the appellants. We give benefit of doubt so far as offence punishable u/s 306 of IPC is concerned for the reason that there is no evidence with regard to torture even even by Dakshaben Vyas, PW No. 1 (Ex. 19), who was neighbour of Urmilaben and who is one of the panch witnesses. Though she is a panch witness, she has been asked certain questions with regard to relations of Urmilaben and her other members of her in-laws and whether disputes used to take place in the family.

From the evidence of Dakshaben Vyas, PW No. 1 (Ex. 19), it appears that by and large there were no disputes which Urmilaben had with her in-laws. Similarly, another witness Mahesh Vyas, PW No. 2 (Ex 20), who is also a panch witness and who also happened to be one of the neighbours, has also stated that, to his knowledge, the appellants and Urmilaben were not having any dispute. In view of the aforesaid facts, it is difficult to establish that the appellants constrained Urmilaben to commit suicide. Though there is evidence to the effect that Urmilaben had consumed poison and her death was only on account of consumption of poison, it cannot be concluded with certainty that the reason for which she committed suicide was the mental and physical torture inflicted upon her by the appellants.

9.8 For the aforesaid reasons, we are not in agreement with the order of conviction passed by the Sessions Court so far as it holds the appellants guilty of the offence punishable u/s 306 of IPC.

9.9 As we do not hold the appellants guilty of the offence punishable u/s 306 of IPC for the aforestated reasons, we do not deal with the submission made by learned advocate Shri Kapoor pertaining to sealing of viscera, etc.

9.9 So far as the submission of learned advocate Shri Kapoor that there is no evidence to indicate demand for dowry, we do not accept the said

submission for the reason that there is ample evidence to the effect that the appellants had demanded dowry from the family of Urmilaben. We have already stated hereinabove that evidence adduced by father and brothers of Urmilaben clearly reveals that money by way of dowry had been demanded by the appellants. The submission of learned advocate Shri Kapoor that the evidence of brothers and father of Urmilaben cannot be considered as it is nothing but hearsay. In our opinion, it cannot be said that evidence adduced by the father and brothers of Urmilaben cannot be looked into. It is not that what they have said is hearsay. They have stated what was informed to them by Urmilaben herself and, therefore, by no stretch of imagination it can be said that evidence of father and brothers of Urmilaben cannot be looked into.

9.10 So far as the judgment in the case of **State of Gujarat v. Bharatbhai Balubhai Lad and others** (supra) is concerned, the facts of the said case are absolutely different. In the instant case, there is sufficient evidence to the effect that because of demand of dowry, Urmilaben had to leave the house of her in-laws and she was also tortured, physically and mentally. Therefore, looking to the facts of the case, in our opinion, reliance on the said judgment would not help the appellants.

9.11 Looking to the facts of the case on hand, it can be very well said that the judgment delivered in the

case of **Gananath Pattnaik v. State of Orissa** (supra) would not render any assistance to the appellants because there is sufficient evidence in the instant case that Urmilaben had been tortured as dowry had not been given by her parents to her in-laws.

9.12 In the case of **Inderpal v. State of M.P.** (supra), because of contradictions in the dying declaration, the court acquitted the accused. In the instant case, there is evidence to the effect that Urmilaben was tortured and, therefore, in our opinion, the said judgment would also not provide any help to the appellants.

9.13 On the contrary, looking to the law laid down by the Hon'ble Supreme Court in the case of **Gurbachan Singh v. Satpal Singh and others** (supra), on the basis of statements made by the close relatives of the deceased, conviction u/s 306 can be made. It has been held in that case that if the deceased committed suicide at the instigation of her husband and in-laws, they can be held guilty u/s 306 of IPC on the testimony of relatives such as father and brother/sisters of the deceased. If the evidence pointed to only one view that cruel behaviour, constant taunts and harassment by accused husband and his relations instigated the suicide, it was a case of conviction u/s 306 of IPC.

9.14 For the aforesaid reasons, we are not in complete agreement with the judgment delivered by the

Sessions Court and, therefore, Criminal Appeal No. 1193/05 filed by the appellants-convicts is partly allowed. The conviction of appellant No. 1-Hilesh @ Nilesh Chandubhai Gohel u/s 306 of the IPC is set aside and his conviction u/s 498(A) of IPC is confirmed. Appellant No. 2-Ranjanben Chandubhai is acquitted. Appellant No. 1-Hilesh@Nilesh Chandubhai, whose conviction u/s 398(A) is confirmed, is ordered to surrender within five weeks from today.

9.15 So far as Criminal Appeal No. 1626/05 filed by the State for enhancement of punishment is concerned, it is dismissed. In spite of all possible efforts made by the learned APP, we do not find any reason to enhance the punishment especially in view of the fact that we are of the view that offences u/s 306 if IPC has not been established.

9.16 Criminal Revision Application No. 577/05 has been filed by the complainant. In view of the fact that both the appeals filed by the appellants-convicts and the appeal filed by the State have been disposed of, the revision application filed by the complainant does not survive and it is therefore rejected.

(Anil R. Dave, J.)

(K.S. Jhaveri, J.)

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